

BEFORE THE IOWA BOARD OF PHARMACY

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IN THE MATTER OF:	)	
	)	Docket No. 2010-72
Request for Reinstatement of	)	DIA No. 20PHB0005
Certified Technician	)	
<b>KATHY SIMONTON</b>	)	
Registration No. 4159	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>DECISION, AND ORDER</b>
	)	

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**STATEMENT OF THE CASE**

On January 7, 2020, a hearing was held before the Iowa Board of Pharmacy (Board) on the Application for Reinstatement filed by Kathy Simonton. The following members of the Board presided at the hearing: Jason Hansel, Chairperson; Edward McKenna, LaDonna Gratias, Joan Skogstrom, Gayle Mayer, Brett Barker, Kathryn Stone, and Dane Nealson. Respondent appeared and was self-represented. Assistant attorney general Tessa Register represented the State. The hearing was closed to the public at the election of Respondent, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Rachel Morgan assisted the Board in conducting the hearing and was instructed to prepare the Board's written decision in accordance with its deliberations.

**THE RECORD**

The record includes the Notice of Reinstatement Hearing; the testimony of Respondent; and State's Exhibits 1 through 9.

**FINDINGS OF FACT**

Respondent was a certified technician, registration number 4159. On April 27, 2011, the Board filed a Statement of Charges alleging two counts against the Respondent: 1) unlawful possession and distribution of drugs; and 2) violating laws related to possession and distribution of controlled substances. Following the filing of a Statement of Charges, Respondent entered into a Stipulation and Consent Order on March 7, 2012 (the "2012 Order"). Under the terms of the 2012 Order, Respondent's registration was placed on probation for a period of five years. Under the terms of the probation, Respondent was required to provide witnessed urine specimens on demand by the Board or its agents within 24 hours of request. In order to facilitate testing, Respondent was required to establish a specimen testing program through FirstLab. (Ex. 3).

On January 17, 2013, the Board filed a Statement of Charges alleging that Respondent violated the 2012 Order. Specifically, Respondent submitted a urine specimen that tested positive for phentermine, a drug for which Respondent did not have a prescription. The Board issued an order on April 24, 2013 finding that Respondent violated Iowa Code section 272C.3(2)(a) by testing positive for a controlled substance for which she did not have a valid prescription. The Board issued a Citation and Warning for the violation, but did not impose a monetary fine. The Board ordered Respondent to continue to fully comply with the terms and conditions of the 2012 Order and her probation, including the random urinalysis. (Ex. 3).

In approximately October, 2013, the Board initiated an investigation based on a report from FirstLab that Respondent had failed to call in a total of 35 times between August 1, 2012 and September 30, 2013 for random urinalysis. On April 30, 2014, the Board issued a Findings of Fact, Conclusions of Law, Decision, and Order (the “2014 Order”). In the 2014 Order, the Board concluded that Respondent had violated the terms of the 2012 Order by failing to call in more than 35 times. Given this non-compliance and the fact that Respondent had already violated the terms of the probation on a prior occasion, the Board issued a short, two-week suspension of her registration. The Board instructed Respondent that if she wished to have her registration reinstated, she would need to follow the procedures outlined in 657 Iowa Administrative Code 35.36 and demonstrate that the basis for the revocation no longer exist and that it is in the public interest for her registration to be reinstated. (Ex. 3).

On October 15, 2019, Respondent filed an Application for Technician Registration with the Board. Respondent stated that she began working at a Hy-Vee pharmacy as a Pharmacy Technician on September 30, 2019 and had received a Certified Pharmacy Technician Certificate from the Pharmacy Technician Certification Board on May 3, 2019. (Ex. 4). On October 22, 2019, the Board notified the Respondent that her registration was suspended, that she is currently unable to work in a pharmacy in any capacity, and that she must make a written application to the Board for reinstatement that alleges “facts that will allow the Board to determine that the basis for the suspension no longer exists and that it is in the public interest for the registration to be reinstated.” (Ex. 5 at p. 63).

On October 23, 2019, Respondent filed a one-page letter requesting to be reinstated. The Board denied her request for reinstatement due to Respondent’s request not containing sufficient information to allow the Board to determine if Respondent’s request should be granted. (Ex. 5 at 61).

On November 6, 2019, Respondent filed another Application for Reinstatement, which is the subject of this proceeding. In her application, Respondent asserts that she was unaware that she needed to apply for reinstatement after her previous suspension. Respondent alleges that the primary reason that she failed to comply with the Board’s 2012 Order requiring random urinalysis was due to her son being in an accident and requiring extensive care. Respondent is requesting that her registration be reinstated now because she must take care of her aging mother and needs the income. Along with the application, Respondent submitted a one-page letter from her doctor dated October

31, 2019 stating that Respondent has been compliant with treatments for her anxiety, including periodic drug screens, and “does not appear to have an issue with nonprescribed medications or recreational drugs.” (Ex. 6). Respondent also provided five years of medical records which include two urine drug screens – one in October 2018 and one in October 2019. Both screens are positive for benzodiazepines, which has been prescribed to Respondent by her doctor. The October 2019 contains a positive test result for marijuana due to Respondent’s use of CBD oils. (Simonton Testimony).

At the hearing, Respondent testified that for the last five years she has cared for her son who suffered a traumatic brain injury in April 2014 and her mother who suffers from Alzheimer’s. However, Respondent misses pharmacy work, needs extra income, and would like to return to pharmacy practice. Therefore Respondent decided to take the Pharmacy Technician Certification Board exam and apply for pharmacy jobs. Respondent testified that she was not aware that she needed to apply for reinstatement with the Board when she was hired by Hy-Vee in September 2019. Therefore, she neither applied for reinstatement nor informed Hy-Vee of her disciplinary history with the Board. Respondent testified that she is a different person now than she was before and is committed to complying with any future Board orders. (Simonton Testimony).

In response to questions regarding Respondent’s assertion that she was unaware that she needed to apply for reinstatement, Respondent stated that she had not read the 2014 Order suspending her registration even though she had received service of the order because her son had been recently injured. However, when the Respondent was presented with evidence that in January 2019 she had received another copy of the 2014 Order suspending her license which was prior to her employment with Hy-Vee, Respondent testified that she was not good about reading her emails and had simply not read the emails from the Board. (Simonton Testimony).

In response to questions regarding her future compliance with any Board order, Respondent testified that she no longer consumes controlled drugs that are not prescribed to her and that she is a different person than she was before. Respondent testified that in light of her son’s injury and her mother’s illness she has a different perspective on life and her employment. However, Respondent could not explain why she did not comply with the call-ins required by previous Board orders and Respondent did not have a plan on how she would insure compliance with any future Board requirements. (Simonton Testimony).

## CONCLUSIONS OF LAW

The Board’s regulations regarding reinstatement provide, in relevant part:

**657-35.36 Reinstatement.** Any person whose license [to practice pharmacy] has been revoked . . . may apply for reinstatement. Any application for reinstatement must be made in accordance with the terms specified in the board’s order or revocation . . . .

**35.36(3) Contents.** The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the respondent's assertion that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to, medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation, statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the respondent.

The Board's rules place a heavy burden on persons seeking reinstatement of a revoked or surrendered license or registration. In this instance, the Board cannot conclude that Respondent has met this burden. Respondent's failure to comply with Board orders, including calling in for drug analysis tests, resulted in her license being suspended and requiring her to apply for reinstatement. Respondent offered no explanation as to why she failed to comply with the prior Board orders and how she planned to comply with future Board orders. Respondent merely stated that she is a different person now and she no longer takes drugs that are not prescribed to her. However, Respondent admitted that she failed to read recent emails from the Board regarding her registration status and failed to report to her current employer the status of her registration and her disciplinary history with the Board. Further, Respondent did not provide any evidence, such as verification from current employers, a more recent drug screening, or other documentation, that would attest to her current well-being, competence and employability. Such actions demonstrate a continued lack of regard of the Board and its licensing authority. The Board does not have sufficient evidence to determine that the basis of the suspension of Respondent's registration no longer exists.

Respondent has failed to establish by a preponderance of the evidence that the basis for the suspension of her registration no longer exists and that it will be in the public interest for her registration to be reinstated.

### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that the application for reinstatement filed by Respondent Kathy Simonton is DENIED.

IT IS FURTHER ORDERED that Respondent may seek reinstatement of her registration pursuant to 657 Iowa Administrative Code 35.36 after the expiration of six months from the date of this Order. If Respondent seeks reinstatement of her registration, it is her

burden to show that the basis for the prior suspension no longer exists and that it is in the public interest that her registration to be reinstated. Respondent may present evidence, including but not limited to, medical and mental health records, any recent drug screening test results, records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations, and verified statements from current and past employers attesting to employability.

IT IS FURTHER ORDERED that Respondent may submit an application for registration as a pharmacy support person at any time.

IT IS FURTHER ORDERED that Respondent shall notify all current and future pharmacy employers of this Order and all other disciplinary actions Respondent has faced involving this Board.

Dated this 25th day of February, 2020

A handwritten signature in black ink, appearing to read 'JHansel', written in a cursive style.

Jason Hansel  
Chairperson, Iowa Board of Pharmacy

cc: Tessa Register, Assistant Attorney General

*Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.*